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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,536	10/31/2003	Percy A. Dickens	2826502.000001	9964
44777	7590	10/06/2005	EXAMINER	
W. EDWARD RAMAGE COMMERCE CENTER SUITE 1000 211 COMMERCE ST NASHVILLE, TN 37201			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*HL*

## Office Action Summary

Application No.

10/698,536

Applicant(s)

DICKENS, PERCY

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,9-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,9,10,12-16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 15, 2005, has been entered.

### ***Election/Restrictions***

2. Applicant's election with traverse of the species of Fig. 6, readable on claims 1,3,5-7,9,10,12-16,18, and 19, in the reply filed on January 31, 2005, is acknowledged.

3. The submitted claim 11 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 11 recites that "the base of the basket concave or angled inwards I whole or in part" as shown in non-elected figures 4 and 5.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Objections***

4. Claim 7 is objected to because of the following informalities: it appears that the word -- said -- should be inserted before "two opposing sides" (claim 1, line 7) because "two opposing sides" is already recited in line 5 and the word "sections" after "base" (claim 11, line 1) should be changed to -- section -- because "one rod " is recited later in line 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1,3,5-7,9-16,18, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the recited phrase “each section of each rod is substantially parallel to corresponding sections of the other rods so that the two opposing ends of the basket are open” (claim 1, lines 11-12) is not clearly understood. Figures 6-8 clearly show that none of the figure has an opening at the end. Moreover, the exact meaning of the recited phrase “the first end and the second end of each rod are affixed to opposite sides of the base mount” (claim 3) is not clearly understood as to how “the ends of each rod are affixed to opposite sides of the base mount”. Note that there is never recited “opposite sides of the base mount”. The “two opposing sides of a box-shaped basket” is only recited in claim 1, line 5. Further, there is no antecedent basis for “the loops” (claim 19. Claims 12-16 are vague and indefinite. Claim 1 clearly recites that “the two opposing ends of the baskets are open” in the last line, but claims 12-16 substantially recites “one open end” is closed by a structural element, which is contrary to the previous claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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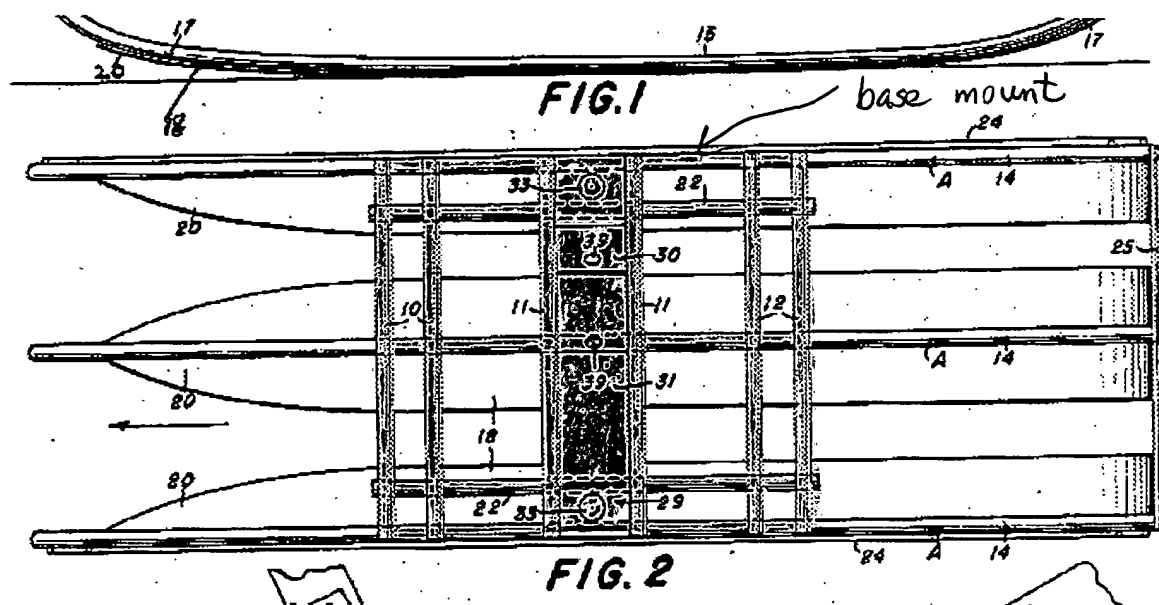
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,3,5-7,9,10,12,13,16, and 18, as best understood, are rejected under 35

U.S.C. 102(b) as being anticipated by Griffith, Jr. (2,864,228).

Griffith, Jr. (2,864,228) discloses a device for retrieving nuts comprising an elongated handle (36), a rectangular base mount (see exhibit A) affixed to on end of the handle, and a box shaped basket . Note that Exhibit A shows a rectangular shaped base mount and each substantially U-shaped rod being fixed to the first and second ends to the base mount wherein each rod is parallel to each other and the opposing ends are open.

Exhibit A



Re claim 5, Exhibit A shows two rectangular pieces.

Re claim 7, figure 3 shows that the rods 16 are substantially and removably affixed to one of the base mounts (30,31) by screws.

Re claim 9, figure 1, as broadly as recited, shows that the bottom portion of the rod and the vertical end (where a member 25 is attached) is approximately 90 degrees.

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Re claims 12,13, and 16, the open ends are closed by a series of rods (24,24) or at least single substantially bend rod.

Re claim 18, the rods are spaced apart in an array at a distance at least the size of a nut, which has at least the diameter of a standard golf ball.

9. Claims 1,3,6,9,10,12,13,16,18, and 19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Touchberry (2,835,099) (see PTO-892).

Touchberry (2,835,099) discloses a device for retrieving nuts comprising an elongated handle (46,48), a rectangular base mount (16,18,20,22) affixed to on end of the handle, and a box shaped basket having a top, a base, two opposing sides, and two opposing ends and a series of rods, each substantially U-shaped rod (26,28,30) having a first end and a second end, the ends being fixed to the base mount wherein each rod is parallel to each other and the opposing ends are open, but the end pieces (Figs. 103) closing the open ends.

Re claim 9, figure 1 shows that the bends in the rod is approximately 90 degrees.

Re claims 12,13, and 16, the open ends are closed by a series of rods (24,24) or at least single substantially bend rod.

Re claim 18, the rods are spaced apart in an array at a distance at least the size of a nut, which has at least the diameter of a standard golf ball.

Re claim 19, the rods are flexible as shown in figure 2.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14 and 15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffith, Jr. (2,864,228) in view of Fu (6,481,768).

Griffith, Jr. device (2,864,228), as presented in section 8 above, does not show that the end piece or a closing piece hingely attached to the rod. However, Fu (6,481,768) teaches a closing end piece 221 (Fig. 6) one end being hingely attached to the mount and the other end being removably attached to the rod end by a clip (224). Accordingly, it would have been obvious to those skilled in the art to provide a removable end piece or closing piece to be attached to the base mount of Griffith, Jr. device (2,864,228) as taught by Fu (6,481,768) in order to flexibility to user to attach or detach the end piece.

12. Claims 14 and 15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Touchberry (2,835,099) in view of Fu (6,481,768).

Touchberry (2,835,099), as presented in section 9 above, does not show that the end piece or a closing piece hingely attached to the rod. However, Fu (6,481,768) teaches a closing end piece 221 (Fig. 6) one end being hingely attached to the mount and the other end being removably attached to the rod end by a clip (224). Accordingly, it would have been obvious to those skilled in the art to provide a removable end piece or closing piece on the base mount of Touchberry (2,835,099) by a clip as taught by Fu (6,481,768) in order to provide a user to attach or detach the end piece to or from the device.

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***Response to Arguments***

13. Applicant's arguments with respect to claims 1,3,5-7,9,10,12-16,18, and 19, in the reply filed on January 31, 2005, is acknowledged.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McPherson (5,328,220) shows a base mount, a handle, and a rod to retrieve a ball.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
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